U.S. Department of Justice

United States Attorney
Eastern District of New York

SDD/PB
F. #2011R00783

271 Cadman Plaza East
Brooklyn, New York 11201

May 2, 2017

By Hand and ECF

Honorable Dora L. Irizarry
Chief Judge, United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Agron Hasbajrami,
Criminal Docket No. 11-623 (S2) (DLI)

Dear Chief Judge Irizarry:

On April 6, 2017, this Court issued a Memorandum and Order (the "Order") denying the defendant's motion to release to his counsel an unredacted version of Judge Gleeson's opinion denying the defendant's motion to suppress evidence obtained or derived from searches conducted pursuant to the FISA Amendments Act of 2008. (Docket ("Dkt.") Entry No. 171). In the Order, this Court thoroughly set forth the applicable standards for disclosure of information under the governing case law in this Circuit and the applicable statutes, including the Classified Information Procedures Act ("CIPA") and the Foreign Intelligence Surveillance Act ("FISA"). After considering the applicable case law and statutes, Your Honor held that "Defendant's counsel are not entitled to view the Unredacted Opinion because releasing it would reveal classified foreign intelligence information and circumvent FISA by undermining the purpose of section 1806(f). . . . By seeking to view the Unredacted Opinion, which references classified information, Defendant's attorneys improperly attempt to access the same classified information Judge Gleeson found they were not entitled to obtain." (Order at 6).

On April 17, 2017, the defendant again moved for additional disclosures relating to the redacted portions of Judge Gleeson's opinion. (Dkt. Entry No. 172, hereinafter the "Defense Letter"). More specifically, the defendant seeks reconsideration of the Order in order "to clarify an issue that is not, because of the nature of the motion, within defense counsel's knowledge, but is within the Court's and government's knowledge," to wit, "whether the redacted material is [1] information that was included in the government's applications for a warrant pursuant to [FISA] . . . or [2] other classified information relied on by Judge Gleeson in reaching the conclusions set forth in his opinion denying the motion to suppress." (Defense Letter at 1). The defendant asserts that, if the information falls within either category, his counsel is entitled to the information. (Id. at 1-2)

The standard for granting a motion for reconsideration is "strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." Analytical Surveys, Inc. v. Tonga Partners, L.P., 684 F.3d 36, 52 (2d Cir. 2012) (citation omitted); see also Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). "A motion for reconsideration should be granted only when the defendant identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust, 729 F.3d 99, 104 (2d Cir. 2013) (citation omitted). It is "not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple." Analytical Surveys, 684 F.3d at 52 (citation omitted).

Here, the defendant clearly has not met the standard for granting a motion for reconsideration. This Court already has considered the precise questions presented in the Defense Letter, and it unequivocally determined that neither CIPA nor FISA compels or allows disclosure of an unredacted copy of Judge Gleeson's opinion. With respect to FISA, this Court determined that defense counsel were not entitled to an unredacted copy of Judge Gleeson's opinion "because releasing it would reveal classified foreign intelligence information and circumvent FISA by undermining the purpose of section 1806(f)." (Order at 6). Further, the Court found that "FISA does not mandate disclosure in order to help defendants make an appeal." (Id. at 7). With respect to CIPA, this Court held that "CIPA does not compel or regulate the discovery of classified information contained in a court's written opinion." (Id. at 11). The Court further observed that, "[b]ecause Judge Gleeson conducted his review of the classified materials by relying on FISA, the Court holds that FISA determines whether or not Defendant's attorneys have a 'need-to-know' the contents of the Unredacted Opinion." (Id. at 12). The Court concluded that, "[a]pplying FISA, defense counsel do not have a need-to-know the contents of the Unredacted Opinion . . . .," and found that "[t]he redacted content neither facilitates countering the government's case nor bolsters a defense." (Id. at 14) (internal quotation marks and alterations omitted).

In light of the above, the government respectfully submits that the Defense Letter does not provide a sufficient reason for the Court to reconsider its Order. To answer the question posed by the defendant, relating to the nature of the redacted information, would permit him to chip away at the protections provided by the very limited redactions, which, this Court noted, constitute "only three lines in a twenty-seven page opinion." (Id. at 13). Judge Gleeson, and now this Court, found that the redactions were appropriate to protect national security, not only respectful of FISA's disclosure provisions but also cognizant of the near inevitability of appellate review and the importance of this case. Moreover, in the motion to reconsider, the defendant makes clear that, regardless of the specific answer to his question, he yet again seeks access to information about which two district courts have now concluded he has no right. Thus, even answering his question would not satisfy the defendant; he still seeks access to the specific underlying information.

The government respectfully submits that this Court should deny the defendant's motion for reconsideration, and that this matter should now proceed in the Second Circuit, where the defendant may raise the issue preserved in connection with his conditional plea of guilty.

Respectfully submitted,

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cc Clerk of Court and all counsel of record, via ECF